

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4299 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABU ALIAS BALI NARANBHAI BHARVAD

Versus

POLICE COMMISSIONER

Appearance:

MR YS LAKHANI for Petitioner

MR KC SHAH, LD. AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner-detenu-Babu alias Bali Naranbhai Bharvad has brought under challenge the detention order dated 25/3/1996 rendered by the respondent no.1 under sec. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as "the PASA Act".

2. In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on criminal cases registered with Rajkot Taluka Police Station, Rajkot City "C" Division Police Station and Rajkot City Malavia Nagar Police Station. They may be enumerated as under :-

- 1) Rajkot Taluka Police Station C.R. No. 334/94
u/Ss. 323, 324 and 114 of the IPC and 37(1) and 135 of the Bombay Police Act. Pending for trial.
- 2) Rajkot City 'C' Division Police Station C.R. No. 34/95 u/Ss. 504, 506(2) 114 of the IPC. Pending for trial.
- 3) Rajkot City 'C' Divn. Police Station C.R. no. 49/95 u/ss. 506(2) and 504 of the IPC. Pending for trial.
- 4) Rajkot city Malavianagar Police Station C.R. No. 74/96 u/ss. 449, 395 of the IPC.

As stated above, all the aforesaid cases are pending trial. Besides, the detaining authority has also placed reliance upon the statements of three witnesses alleging that the detenu has been extorting money and committing offences of extortion and causing hurt to the witnesses and creating atmosphere of fear in the concerned localities. Considering these materials the detaining authority was of the view that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was fully necessary to pass an order of detention against him. This is how the impugned order came to be passed.

3. I have heard the learned advocate for the petitioner and the Ld. AGP for the State. This petition is capable of being disposed of on the first contention advanced by Mr. Lakhani, learned advocate for the petitioner and hence, it would not be necessary to deal with other contentions and grounds advanced to present the cause of the petitioner. It has been contended that the two cases registered against the petitioner at City C Division Police Station - C.R. No. 34/95 and C.R. no. 49/95 are the cases falling neither under Chapter 16 nor under Chapter 17 of the IPC, whereas the detaining authority has relied upon such cases as the cases falling under the said Chapters of the IPC. The allegations made in the aforesaid C.R. Nos. are yet to be established. However, assuming that the allegations made in the grounds of detention are true, in that event also, at the

most, the detenu can be held responsible for committing breach of law and order and under no circumstances, he can be held responsible for breach of public order. Under the circumstances, the subjective satisfaction arrived at by the detaining authority to the effect that with a view to maintaining public order, the detention of the detenu is necessary, is not genuine and therefore, based on extraneous grounds. Hence, the impugned order of detention cannot be said to be legal and valid. Reliance has been placed on the decision of this Court rendered on 3/7/1996 (Coram : K.R. Vyas, J.) in Special Civil Appln. No. 1610/1996. There also, individual charges were of theft. It was held that all the cases registered against the detenu there were for the alleged offences of lurking house trespass and theft filed against the detenu. It was, therefore, held that there was no question of breach of public order. The present case stands on a little different footing inasmuch as the detaining authority has placed reliance on the material as aforesaid which does not fall under Chapter 16 or 17 of the IP, although the subjective satisfaction has been derived on the footing that the offences which have been registered against the detenu are of Chapters 16 and 17 of the IPC. Thus, there is apparent non-application of mind on the part of the detaining authority and that consideration of extraneous material for forming the opinion as per the impugned order of detention would vitiate the same. Hence, in the facts and circumstances of the case, the subjective satisfaction reached by the detaining authority cannot be said to be genuine.

4. In the result, the petition is allowed. The impugned order of detention is quashed and set aside. The petitioner-detenu-Babu alias Bali Naranbhai Bharvad shall be forthwith set at liberty if he is not required for any other case. Rule made absolute accordingly.

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